

# MEETING AGENDA

## STATE OF ARIZONA • OFFICIAL NOTICE OF PUBLIC MEETING

The Arizona Department of Environmental Quality announces a **Stakeholder Meeting** on **Draft Underground Storage Tank (UST) Program No Further Action & Monitored Natural Attenuation (NFA/MNA) Rule.**

**WHEN:** Monday, April 16, 2007  
2:00 p.m. to 4:00 p.m.

**WHERE:** Industrial Commission Building  
800 West Washington Street  
Phoenix, AZ 85007  
Auditorium

**AGENDA:**

- Call to Order / Introductions
- General overview of draft NFA & MNA rule
- Comments
- Future Rulemaking Activities
- Adjourn

**ATTACHMENTS:**

- Summary of proposed NFA & MNA rule
- Draft NFA & MNA Rule

**CONTACTS:**

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Persons with disabilities may request a reasonable accommodation such as a sign language interpreter by contacting Donna Walker at (602) 771-4262, or 1-800-234-5677, ext 771-4262. Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY  
Tank Programs Division  
**Corrective Action Section**

## SUMMARY OF PROPOSED NO FURTHER ACTION & MONITORED NATURAL ATTENUATION RULE

On September 29, 2006, a rulemaking docket was opened for the no further action / monitored natural attenuation (NFA / MNA) rule. The NFA / MNA rule will include language concerning the following three components that are related to the Underground Storage Tank (UST) Program:

### **NO FURTHER ACTION (NFA) LETTER**

Authority: Senate Bill (S.B.) 1306 (2004) Session Law Section 12 and Arizona Revised Statutes (A.R.S.) §49-1052(N)

Purpose: Will allow ADEQ to issue a NFA letter for a leaking UST (LUST) site if requested by the UST owner or operator, and based on the following:

- The UST release was reported before July 1, 2006,
- The UST release is eligible for the state assurance fund (SAF),
- Source removal/control is complete,
- The NFA letter request and a corrective action plan (CAP) are submitted before June 30, 2010,
- A CAP has been approved where MNA is being used as the remedial method for the remaining groundwater contamination,
- Subsequent to issuing a no further action letter, the Director will perform additional corrective actions using the MNA account, and
- LUST case closure will only occur when all applicable corrective action standards are met.

### **MONITORED NATURAL ATTENUATION (MNA) ACCOUNT**

Authority: S.B. 1306 (2004) Session Law Section 12 and A.R.S. §49-1015.01

Purpose: Will implement the MNA account of the Regulated Substance Fund, which will be used by ADEQ to perform continued monitoring or corrective actions at LUST sites where:

- The UST release was reported before 07/01/2006,
- The UST release is eligible for the SAF,
- Source removal/control is complete,
- A NFA letter has been approved,

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- Groundwater contamination remains,

- There are no threatened or impacted drinking water receptors,
- The LUST site can not be closed in accordance with A.R.S. §49-1005(E),
- A CAP has been approved, and
- MNA is being used as the remedial method for the remaining groundwater contamination.

## **GROUNDWATER LUST CASE CLOSURES**

Authority: A.R.S. §49-1005(E)

Purpose: The existing corrective action rule (Arizona Administrative Code (A.A.C.) R18-12-263.01 and .03) will be revised to allow ADEQ to approve LUST case closures without the placement of institutional controls on the deeds of all properties affected by the remaining groundwater plume after consideration of the following:

- Groundwater plume characterization,
- Source removal/control,
- Groundwater plume stability,
- Natural attenuation,
- No drinking water wells are threatened or impacted,
- Other exposure pathways,
- Notification to Arizona Department of Water Resources (ADWR), affected property owners, and drinking water providers, and
- Subsequent to LUST case closure, additional corrective actions may be required of the UST owner or operator if a receptor is shown to be threatened or impacted.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY  
Tank Programs Division  
**Corrective Action Section**

**DRAFT**  
**NO FURTHER ACTION (NFA) & MONITORED**  
**NATURAL ATTENUATION (MNA) RULE**

[Revision 4/06/2007]

**TITLE 18. ENVIRONMENTAL QUALITY**  
**CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY - UNDERGROUND**  
**STORAGE TANKS**

**ARTICLE 1. DEFINITIONS; APPLICABILITY**

**R18-12-101. Definitions**

In addition to the definitions prescribed in A.R.S. §§49-1001 and 1001.01, the terms used in this Chapter have the following meanings:

“Monitored natural attenuation” means the reliance on natural attenuation processes, within the context of a carefully controlled and monitored site cleanup approach, to achieve site-specific remediation objectives within a time frame that is reasonable compared to that offered by other more active methods. [NOTE: from EPA, OSWER Directive 9200.4-17P]

“Natural attenuation” means a reduction in mass or concentration of a chemical of concern in groundwater over time or distance from the release point due to naturally occurring physical, chemical, and biological processes, such as: biodegradation, dispersion, dilution, sorption, and volatilization. [NOTE: taken from ASTM Standard E-1943]

“Source of contamination” means with respect to Chapter 12, the conditions described in A.R.S. §49-1052(N).

**ARTICLE 2. TECHNICAL REQUIREMENTS**

**R18-12-263.04. Groundwater LUST Case Closures**

A. Applicability. Pursuant to A.R.S. §49-1005(E), the Director may approve a corrective action that may result in aquifer water quality exceeding aquifer water quality standards after completion of the corrective action in accordance with one of the following:

1. A Tier 2 or Tier 3 evaluation in accordance with R18-12-263.01(A)(2) or (3); and (4); or
2. The process described in this section.

B. Site-specific requirements. The Director may approve LUST case closure where there is an exceedance of an aquifer water quality standard without requiring the placement of institutional controls on the deeds of all properties affected by the groundwater contamination related to the UST release, after consideration of the following:

1. Characterization of the groundwater plume;
2. Source removal or control;
3. Groundwater plume stability;
4. Natural attenuation;
5. Threatened or impacted drinking water wells;
6. Other exposure pathways; and
7. Other information that may be pertinent to the LUST case closure approval.

C. Public notice. If, after consideration of the criteria specified in subsection (B), the Department determines that the LUST site is eligible for LUST case closure, the Department shall provide public notice in accordance with R18-12-264.01.

D. Conditions for approval of LUST case closure. After consideration of comments obtained through the public notice process, the Department shall evaluate whether the LUST case meets the requirements of this Section and A.R.S. §49-1005; and determine if the LUST case closure can be approved.

E. Notice of LUST case closure decision. The Department shall provide written notice to the owner or operator whether the LUST case closure is approved.

F. Future corrective actions. Subsequent to LUST case closure, if the Department becomes aware of site-specific conditions that warrant additional corrective actions, the LUST case file may be re-opened and the UST owner or operator will be required to perform additional

corrective actions necessary to comply with the requirements of R18-12-261 through R18-12-264.01. However, if a no further action letter was issued by the Department in accordance with R18-12-265, the additional corrective actions will be performed by the Department in accordance with A.R.S. §§49-1015.01 and 1017; unless the no further action letter was rescinded in accordance with R18-12-265(G).

#### **R18-12-264.01. Public Participation**

- A. Public notice. If public notice is required by A.R.S. §49-1005, or rules made under that Section, the Department shall provide a minimum of 30 calendar days notice to the public regarding a public comment period. The Department shall use a method of public notice designed to reach those members of the public directly affected by the release and the planned corrective actions ~~including, which may include, but is not limited to one or more of the following:~~ publication in a newspaper of general circulation, posting at the facility, mailing a notice to ~~owners of property affected or potentially affected by contamination from the release and corrective actions~~ applicable persons, or posting on the Department's internet site. ~~If a CAP includes a corrective action standard for water based on a Tier 2 or Tier 3 evaluation, the Department~~ At a minimum, the notice shall be sent send a copy of the notice to the UST owner and operator, owners of property directly affected or potentially directly affected by contamination from the release and corrective actions, the Arizona Department of Water Resources, the applicable county and any municipality where the CAP will be implemented, water service providers and persons having water rights that may be impacted by the release.
- B. Public notice contents. The Department shall provide notice to the public that includes all of the following:

1. Identifies the name of the document ~~submitted to the Department~~ that is available for public comment;
  2. Identifies the facility where the release occurred and the site of the proposed corrective actions.
  3. If the document is a CAP, identifies the date the ~~document~~ CAP was submitted to the Department and name of person who submitted the ~~document~~ CAP;
  4. Provides a specific explanation if a corrective action standard for water is based on a Tier 2 or Tier 3 evaluation;
  5. Identifies ~~at least 2 locations~~ the location where a copy of the document can be viewed by the public, ~~including the Department's Phoenix office and the public library located nearest to the LUST site~~;
  6. Explains that any comments on the document shall be sent to the Underground Storage Tank Program of the Department within the time frame specified in the notice; and
  7. Describes the public meeting provisions of subsection (C).
- C. Public meeting. ~~After consideration of the amount of public interest, and before approving a document requiring public participation, the~~ The Department may hold a public meeting to receive comments on a document undergoing public review. If the Department holds a public meeting, the Department shall schedule the meeting and notify the public, in accordance with subsection (A), of the meeting time and location.

#### **R18-12-265. Monitored natural attenuation (MNA) Program**

- A. MNA Program eligibility. An UST owner or operator, or a person who undertakes corrective actions pursuant to A.R.S. §49-1052(I) may request that the Department perform



corrective actions in accordance with A.R.S. §49-1015.01(D) beginning July 1, 2011, if the following conditions occur:

1. The UST release or releases of a regulated substance were reported to the Department before July 1, 2006; and are eligible for SAF in accordance with A.R.S. §49-1052;
2. Source removal or control is complete, to the extent practicable;
3. The soil contamination associated with the release is at or below the applicable corrective action standards in accordance with R18-12-263.01;
4. Natural attenuation is occurring;
5. A corrective action plan in accordance with R18-12-263.02, has been approved in which monitored natural attenuation is all or a portion of the selected remedy; and
6. A MNA Program application in accordance with subsection (B) has been submitted and approved by the Department before July 1, 2010.

B. Contents of an MNA Program application. The MNA Program application shall be in a form prescribed by the Department and contain:

1. Information on the applicant;
2. Information on the applicable release(s);
3. Environmental media currently impacted by the applicable release(s);
4. A site vicinity map, site location map and a site plan;
5. The as built construction diagrams of existing monitoring wells;
6. A tabulation of soil and groundwater analytical results and water level data;
7. Documentation that source removal or control has been completed to the extent practicable;
8. Documentation that natural attenuation is occurring; and
9. Other information that may be pertinent to the MNA Program application approval.

C. Conditions for approval of a MNA Program application. After receipt of a MNA Program application submitted in accordance with subsection (A), the Department shall review and either approve, deny or request modifications to the application. The Department may request additional information before acting on the application. The Department shall approve the application if the application submitted in accordance with subsections (A) and (B), and this subsection is complete; and the information in the application is approved by the Department. Approval of an application under this section means that a no further action letter as described in subsection (E) will be sent to the applicant and the Department will perform future corrective action in accordance with subsection (F), unless the application and no further action letter is rescinded under subsection (G).

D. Notice of approval of a MNA Program application. The Department shall provide written notice to the applicant that the MNA Program application has been approved by issuing a no further action letter in accordance with subsection (E).

E. Contents of no further action letter. The no further action letter shall notify the applicant of the following:

1. That the Department is not requiring the applicant to perform additional corrective actions for soil or groundwater for the property at which the referenced UST release occurred;
2. That soil contamination associated with the release is at or below the applicable corrective action standards in accordance with R18-12-263.01;
3. That groundwater contamination associated with the release is above the applicable corrective action standards in accordance with R18-12-263.01;
4. That additional corrective actions will be performed by the Department as specified in subsection (F);

5. That the Department shall not approve closure of the LUST case file under R18-12-263.03(D) until the applicable groundwater corrective action standards in accordance with R18-12-263.01, or the conditions of R18-12-263.04, are met for the groundwater contamination;

6. The conditions of subsection (G) that may result in rescinding the MNA Program application and no further action letter; and

7. That the Department is requiring:

a. A property access agreement from the UST owner or operator if they own the property, or from the person who undertakes corrective actions pursuant to A.R.S. §49-1052(I), which allows the Department to access the property to perform the necessary corrective actions specified in subsection (F); and

b. A transfer of ownership of applicable monitor wells selected by the Department to be used to perform the corrective actions specified in subsection (F), from the UST owner or operator, or a person who undertakes corrective actions pursuant to A.R.S. §49-1052(I) to the Department.

c. The proper abandonment of monitor wells not selected by the Department for future monitoring, and

d. The decommissioning of any remedial equipment not selected by the Department.

F. Additional corrective actions. The following corrective actions will be performed by the Department in accordance with A.R.S. §§49-1015.01 and 1017:

1. Activities related to monitoring the natural attenuation of the groundwater contamination related to the UST release;

2. Other necessary corrective actions in accordance with A.R.S. §49-1005, if information, which was previously not known to the Department, is received by the Department which indicates that soil or groundwater contamination on the property at which the referenced

UST release occurred does not meet the appropriate corrective action standard in accordance with R18-12-263.01; and

3. Other necessary corrective actions in accordance with A.R.S. §49-1005, if site conditions change rendering monitored natural attenuation not adequate to meet the appropriate corrective action standard in accordance with R18-12-263.01.

G. Rescinding an approved MNA Program application and no further action letter. The Department may rescind the MNA Program application and no further action letter approved under subsection (C) and require the UST owner or operator to perform corrective actions pursuant to A.R.S. §49-1005, if the information submitted pursuant to subsections (A), (B) or (C) was inaccurate, false or misleading.

## **ARTICLE 9. REGULATED SUBSTANCE FUND**

### **R18-12-901. Monitored Natural Attenuation Account**

- A. Use of monitored natural attenuation account monies. Pursuant to A.R.S. §49-1015.01(D), monies deposited in the regulated substance fund on July 1, 2011, may be used by the Director to perform corrective actions at SAF eligible LUST sites if all of the following documents are approved by the Department before July 1, 2010:
1. A corrective action plan in accordance with R18-12-263.02, in which monitored natural attenuation is all or a portion of the selected remedy; and
  2. A MNA Program application in accordance with R18-12-265.
- B. Exception. Pursuant to A.R.S. §49-1015.01(D), monies in the fund may be used by the Director to perform corrective actions at LUST sites that meet the criteria of subsection (A) but the Department has subsequently determined that monitored natural attenuation is not adequate to meet the conditions of A.R.S. §49-1005(D).

C. Performance of corrective actions. The Director may perform corrective actions which are required by this section in a manner consistent with the corrective actions performed in accordance with A.R.S. §49-1017.